ARTICLE

NIPR 2024-50

The Anti-SLAPP Directive in the context of EU and Dutch private international law: improvements and (remaining) challenges to protect SLAPP targets

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Abstract

While the scope of the Anti-SLAPP Directive is broad, this paper argues that the criteria of 'manifestly unfounded claims' and the 'main purpose of deterrence of public participation' may challenge the protection of SLAPP targets. The Real Madrid *ruling should nonetheless play an important guiding role in all Member States; the legal certainty and protection for SLAPP targets will increase by applying by analogy the factors of the* Real Madrid *ruling established by the CJEU to assess whether there is a manifest breach of the right to freedom of expression. Although the Anti-SLAPP Directive provides various procedural safeguards for SLAPP victims, it does not prevent SLAPP targets from being abusively sued in multiple Member States on the basis of online infringements of personality rights or copyrights. The recast of the Brussels Ibis and Rome II should alleviate this negative effect of the mosaic approach by adopting the 'directed activities' approach.*

While the public policy exception in Dutch PIL already has a great deal of potential to refuse the recognition and enforcement of third-country judgments involving a SLAPP, the grounds in Article 16 Anti-SLAPP Directive provide legal certainty, and likely have a deterrent effect on claimants outside the EU. As EU and Dutch PIL generally do not provide a venue for SLAPP targets to seek compensation for the damage and costs incurred regarding the third-country proceedings initiated by the SLAPP claimant domiciled outside the EU, the venue provided by Article 17(1) Anti-SLAPP Directive improves the access to Member State courts for SLAPP targets domiciled in the EU. However, although Articles 15 and 17 Anti-SLAPP Directive aim to facilitate redress for SLAPP victims, the resulting Member State judgments may not be effective in case these are not recognised and enforced by third states. Hence, international cooperation is important to combat SLAPPs worldwide.

1. Introduction

'News is what someone wants suppressed … What we print and what we don't print matter a lot.'[1] This quote from Katharine Graham, the former publisher of the Washington Post,

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1 Katharine Graham, see the post by the Society of Professional Journalists on 24 April 2018, available at «https://x.com/spj_tweets/status/988804792469344257».

expresses both the difficulty that journalists may face, and the importance of the right to freedom of expression and to information. Globalisation and the internet facilitate the exchange of information not only by journalists but every individual such as bloggers. However, in Europe there is an increase in unfounded claims and abusive use of court proceedings initiated by private actors, particularly wealthy individuals and companies, to silence journalists and other persons engaging in public participation such as whistleblowers, human rights and climate defenders, artists, academics, and non-governmental organisations (NGOs).[2] As research shows, (the threat of) strategic lawsuits against public participation (SLAPPs) causes psychological and financial punishment for SLAPP targets which impedes the publication of content or speech on matters of public interest such as environmental damage, corruption, and discrimination.[3] This negative impact on the right to freedom of expression is detrimental to the right to freedom of information; these rights are pivotal in a democracy and in view of the rule of law.[4]

Several countries, such as the United States of America, have had Anti-SLAPP mechanisms at a judicial and legislative level for some time, such as early dismissal and compensation for damages by SLAPP victims.[5] In response to the murder of the Maltese journalist Daphne Caruana Galizia in 2017,[6] and the increase in SLAPP actions in several European countries, NGOs published a proposal for a EU regulation in December 2020.[7] Consequently, in early 2021, the European Commission assembled an expert group to advise on 'any matter relating to the fight against SLAPP or the support to their victims'.[8] In view of the lack of Anti-SLAPP regulations in EU Member States and to strengthen democracy, the rule of law and media

2 See the following two reports written by the Coalition Against SLAPPs (CASE) in Europe: *Shutting Out Criticism: How SLAPPs Threaten European Democracy*, March 2022; *SLAPPs: A Threat to Democracy Continues to Grow*, July 2023, available via «https://www.the-case.eu/resources/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/». See also European Parliament Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI)), *OJ* 2022, C 205/2-16 (hereinafter European Parliament Resolution on SLAPP 2021).

3 Ibid. According to a survey by 'PersVeilig' completed by journalists, journalists in the Netherlands are more cautious about publishing to avoid the risk of legal action, see «https://www.persveilig.nl/over-persveilig/onderzoek». See also «https://www.nvj.nl/nieuws/juridische-dreigementen-maken-journalisten-voorzichtiger-publiceren». The term 'strategic lawsuits against public participation', SLAPPs, was coined in the United States of America by P. Canan & G.W. Pring, 'Strategic Lawsuits against Public Participation', *Social Problems* (35/5) 1988, p. 506.

4 See J. Borg-Barthet, B. Lobina & M. Zabrocka, *The use of SLAPPs to silence journalists, NGOs and civil society*, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, 2021, pp. 7-11, available at «https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)694782».

5 With respect to the SLAPPs legislation and case law in the United States of America, Canada and Australia, see Borg-Barthet, Lobina & Zabrocka 2021, pp. 14-18 (*supra* note 4).

6 See *infra* note 11.

7 L.M. Ravo, J. Borg-Barthet & X.E. Kramer, 'Protecting Public Watchdogs Across the EU: A Proposal for an EU Anti-SLAPP Law', available at «https://dq4n3btxmr8c9.cloudfront.net/files/zkecf9/Anti_SLAPP_Model_Directive.pdf».

8 See «https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&do=groupDetail.groupDetail&groupID=3746».

freedom in the EU, in 2021 the European Parliament enacted a resolution to express the urgent need for 'common and effective safeguards for victims of SLAPPs across the Union, including through a directive establishing minimum standards for protection'.[9] Although the intention of the European Parliament was never to (comprehensively) regulate private international law (PIL), the it pointed out that EU PIL currently facilitates SLAPPs based on defamation and should be altered.[10]

Directive (EU) 2024/1069 on the protection of persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (the Anti-SLAPP Directive) entered into force on 6 May 2024.[11] This Directive urges Member States to implement various procedural safeguards in civil proceedings against public participation before Member State courts such as the early dismissal of manifestly unfounded claims, security for the estimated costs of the proceedings, and financial and legal assistance to SLAPP targets.[12] Furthermore, Articles 16 and 17 Anti-SLAPP Directive aim to protect EU citizens and civil society against SLAPPs initiated in third countries.

The Anti-SLAPP Directive has to be implemented in the Member States, including in the Netherlands, by 7 May 2026.[13] This paper will assess the improvements and challenges that this Directive entails for the protection of SLAPP targets from the perspective of Dutch PIL. This paper will make a similar assessment in the context of EU PIL which will in particular be important to address the remaining challenges in view of the future recast of Brussels Ibis and Rome II.[14] The assessment will include PIL principles such as predictability, legal certainty, and

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9 See European Parliament Resolution on SLAPP 2021, para. 22 (*supra* note 2).

10 Based on the CJEU's interpretation of Art. 7(2) Brussels Ibis (Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, *OJ* 2012, L 351/1-32) in defamation cases, the claimant can choose to sue the SLAPP target before the courts of multiple states. See also section 3.1, in particular the CJEU's case law in *infra* note 39. In addition, the lack of a uniform conflict-of-laws rule in Rome II (Regulation (EC) No. 864/2006 of the European Parliament and the Council of 11 July 2007 on the applicable law to non-contractual obligations, *OJ* 2007, L 199/40-49) enables libel tourism as the claimant can sue the SLAPP target before the court of the country that provides the lowest protection of freedom of expression. See Borg-Barthet, Lobina & Zabrocka 2021, pp. 38-44 (*supra* note 4). See also J. Borg-Barthet, 'The Brussels Ia Regulation as an Instrument for the Undermining of Press Freedoms and the Rule of Law: An Urgent Call for Reform', University of Aberdeen School of Law Centre of Private International Law Working Paper Series, No. 007/20, 2020, pp. 22, 25.

11 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), *OJ* L 2024/1069, 16.4.2024. See Art. 23 of the Anti-SLAPP Directive on entry into force. The Anti-SLAPP Directive has been referred to as Daphne's law. The Maltese journalist Daphne Caruana Galizia had 48 SLAPPs pending against her at the time of her murder in 2017 as she conducted research on possible corruption and organised crime by Maltese politicians and their business partners. See Borg-Barthet, Lobina & Zabrocka 2021, pp. 8-9 (*supra* note 4).

12 See Chapters II, III, IV, VI of the Anti-SLAPP Directive.

13 Art. 22(1) Anti-SLAPP Directive.

14 The issue of SLAPPs has been one of the areas of special interest in studies on the reform of Brussels Ibis and Rome II. See N. Rass-Masson, V. Rouas, M. Paron Trivellato & L. Vona, *Study to support the preparation of a report on the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement*

the sound administration of justice. The adherence to these principles is important to legitimise the use of PIL as an instrument to protect human rights,[15] such as the right to freedom of expression and the right to information.[16]

The paper will first set out the scope of the Anti-SLAPP Directive. From the perspective of EU PIL, this paper will then show that although the early dismissal mechanism of Article 11 Anti-SLAPP Directive improves the protection of SLAPP targets, it does not effectively address the challenge of abusive multistate litigation. To improve the protection of SLAPP targets, this paper will argue that the 'directed activities' approach should be adopted in the recast of Brussels Ibis and Rome II with respect to alleged infringements of personality rights and copyrights. This paper will also point to the improvement related to the burden of proof rule in Article 12 Anti-SLAPP Directive, and explain the challenge related to the scope of the courts' jurisdiction to impose penalties or other measures according to Article 15 Anti-SLAPP Directive. Furthermore, in the context of EU and Dutch PIL, the paper will discuss the improvements and challenges of Articles 16 and 17 Anti-SLAPP Directive related to third-country proceedings. The conclusion will point out that the Anti-SLAPP Directive generally entails improvements for the protection of SLAPP targets in the context of EU and Dutch PIL, but there are (remaining) challenges that should be addressed by PIL at the EU and international level.

2. Scope of the Anti-SLAPP Directive

From a material perspective, the Anti-SLAPP Directive applies to civil or commercial matters with cross-border implications brought in proceedings involving manifestly unfounded claims, or abusive court proceedings, against natural and legal persons because of their engagement in matters involving public interest such as the environment or allegations of corruption.[17] Key elements are 'unfounded claims' and the requirement that court proceedings 'have as their main purpose the prevention, restriction, or penalisation of public participation' as laid down in Article 4(3) Anti-SLAPP Directive. This paper will later point out the challenges regarding

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of judgments in civil and commercial matters (Brussels Ia Regulation), Final report, Publications Office of the European Union, 2023 (hereinafter *Study Brussels Ia Regulation* 2023), available at «https://op.europa.eu/en/publication-detail/-/publication/4e4370d0-cead-11ed-a05c-01aa75ed71a1/language-en»; S. Migliorini, E. Lein, C. Bonzé & S.O'Keeffe, *Study on the Rome II Regulation (EC) 864/2007 on the law applicable to non-contractual obligations*, Publications Office of the European Union, 2021, «https://data.europa.eu/doi/10.2838/399539» (hereinafter *Study on Rome II* 2021).

15 On the need for an analysis of legitimacy in the context of the instrumentalization of PIL, see V. Van Den Eeckhout, 'Private International Law Questions that Arise in the Relation between Migration Law (in the Broad Sense of the Word) and Family Law: Subjection of PIL to Policies of Migration Law?, 2013, pp. 10-12, available at «https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2203729»https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2203729. With respect to the instrumentalisation of PIL in the context of EU law, Meeusen pointed out the importance of upholding the goals and purposes of PIL. See J. Meeusen, 'Instrumentalisation of Private International Law in the European Union: Toward a European Conflicts Revolution?', *European Journal of Migration and Law* (9/3) 2007, p. 305.

16 Art. 4(1) Anti-SLAPP Directive also refers to the right to freedom of the arts and sciences, and freedom of assembly and association.

17 Art. 4(2) Anti-SLAPP Directive broadly defines 'matters of public interest'. Recital 29 states that claims in SLAPPs 'can be either fully or partially unfounded'.

the lack of definitions of these concepts.[18] SLAPPs are often filed on the basis of defamation, but they may also concern claims based on, *inter alia*, copyright infringements,[19] unfair competition,[20] violation of trade secrets, infringement of privacy and data protection laws, or claims in the context of labour law.[21]

Article 2 Anti-SLAPP Directive excludes arbitration, revenue, customs, administrative and criminal matters, and the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*). While recital 20 appears to indicate that the case law of the Court of Justice of the European Union (hereinafter CJEU) regarding the scope of civil and commercial matters should be applied by analogy, Member States can extend the scope of the procedural safeguards provided for in the Directive to claims arising out of *acta iure imperii*.

Article 5(1) Anti-SLAPP Directive broadly defines 'matters with cross-border implications' by only excluding the situation that 'both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State'.[22] Based on the Commission's proposal, cross-border implications arise, for example, if 'the specific act of public participation concerning a matter of public interest at stake is relevant to more than one Member State', or if 'the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State'.[23] As indicated by the European Parliament, the mere fact that the SLAPP target has published online could constitute cross-border implications.[24] To illustrate the broad scope of 'cross-border implications', the case before the District Court of Amsterdam against the publisher of 'Het Financieele Dagblad' initiated by a major shareholder of a Dutch listed international tech company could have constituted 'cross-border implications' if employees or shareholders of this tech company were located in a Member State other than the Netherlands.[25] The concept of 'cross-border implications' under the Anti-SLAPP Directive thus seems to be broader than the traditional concept in PIL, which is desirable as otherwise the majority of SLAPPs would fall outside the scope of the Directive.[26]

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18 See sections 3.1, 4.1.2.3, 4.2.3.

19 J. Bayer, P. Bárd, L. Vosyliute & N.C. Luk, *Strategic Lawsuits Against Public Participation (SLAPP) in the European Union. A Comparative Study*, EU-Citizen: Academic Network on European Citizenship Rights, 30 June 2021, p. 193.

20 C. Kohler, 'Private international law aspects of the European Commission's proposal for a directive on SLAPPs ("Strategic lawsuits against public participation")', *Rivista di diritto internazionale private e processuale* 2022, p. 823.

21 See also *Study Brussels Ia Regulation* 2023, p. 13 (*supra* note 14).

22 According to Art. 5(2) Anti-SLAPP Directive, the concept of domicile has to be determined in accordance with Brussels Ibis.

23 See European Commission Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), Brussels 27 April 2022, COM(2022) 177 final, p. 12.

24 See the Amendments adopted by the European Parliament on the proposal of the Anti-SLAPP Directive (*infra* note 43), p. 13/46, Amendment 24 of recital 22.

25 District Court of Amsterdam 24 January 2024, ECLI:NL:RBAMS:2024:319.

26 See also F. Farrington & M. Zabrocka, 'Punishment by Process: The Development of Anti-SLAPP legislation in the European Union', *ERA Forum* (24) 2023, p. 528. They refer to the CASE report 2023, p. 17 (*supra* note 2).

Member States have until 7 May 2026 to transpose the Anti-SLAPP Directive into their legislation.[27] In practice, this Directive has already been invoked in the Netherlands even before its implementation.[28] With respect to its geographical scope, Denmark is not bound by the Anti-SLAPP Directive.[29] In the context of Articles 16 and 17 involving third-country proceedings, sections 4.1.1 and 4.2.1 will point out specific geographical limitations.

3. Assessing PIL implications of procedural safeguards: improvements and challenges in the context of EU and Dutch PIL

The procedural safeguards in Chapters II, III, IV of the Anti-SLAPP Directive should be applied in Member State court proceedings irrespective of whether the Member State court has obtained jurisdiction on the basis of a treaty, EU PIL, or national PIL such as Dutch PIL.[30] As indicated in section 2, the claim against the SLAPP target can be based on many grounds. According to PIL, the ground for the claim determines the ground on which a Member State court may have jurisdiction.[31] For instance, the jurisdictional grounds of Articles 4 and 7(2) Brussels Ibis can be applied in case of a claim against a SLAPP target domiciled in the EU on the basis of an alleged tort such as defamation, or copyright infringements. On the basis of Articles 11, 12 and 15 Anti-SLAPP Directive, the following sections will address the improvements and challenges to protect SLAPP targets in the context of EU and Dutch PIL.

3.1 Early dismissal mechanism

According to Article 11 Anti-SLAPP Directive, Member State courts should be able to 'dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law'. On the basis of Dutch procedural law, Dutch courts are currently allowed to declare a claim inadmissible on the basis of abuse of process according to Article 3:13 in conjunction with Article 3:15 Dutch

27 See Arts. 22 and 23 Anti-SLAPP Directive.

28 The jurisdictional ground contained in Art. 17(1) Anti-SLAPP Directive has recently been invoked by 'Greenpeace International', a non-profit foundation established in the Netherlands, to claim damages and costs suffered as a result of SLAPPs initiated by the American companies 'Energy Transfer et al.' before the courts of the United States of America. See «https://www.greenpeace.org/international/press-release/68484/greenpeace-international-challenges-energy-transfer-in-first-use-of-eu-anti-slapp-directive/». For more information on the case of *Energy Transfer et al. v. Greenpeace International et al.*, see section 4.2.2.

29 See recital 53 Anti-SLAPP Directive.

30 Considering the difference between the broad interpretation of the concept of 'cross-border implications' under the Anti-SLAPP Directive and the traditional interpretation of this concept in PIL, this Directive may even be applicable when Member State courts have obtained jurisdiction based on national procedural law.

31 For instance, Art. 79 Regulation (EU) 2016/679 General Data Protection Regulation may confer jurisdiction on a Member State court in case of a SLAPP claim against a controller or processor of data based on alleged infringements of data protection. With respect to a SLAPP against an employee in the context of labour situations, Arts. 20-23 Brussels Ibis confer jurisdiction on certain Member State courts.

Civil Code (DCC).[32] In view of the legal literature, on the basis of these provisions the Dutch courts could dismiss a claim that only aims to discourage public participation.[33] Based on the Dutch Supreme Court's (*Hoge Raad*) case law related to Articles 3:13 and 3:15 DCC, Dutch courts can dismiss a claim if the claimant knew or ought to have known that the claim is based on incorrect grounds.[34] Compared to Dutch procedural law, the early dismissal mechanism of Article 11 Anti-SLAPP Directive therefore provides no improvement for SLAPP targets.

However, the early dismissal mechanism in Article 11 Anti-SLAPP Directive can only be invoked in case of manifestly unfounded claims, which entails the following two challenges. First, as the concept of 'manifestly unfounded claims' is not defined in the Directive, Member States may differently interpretate this concept,[35] especially given that the substantive law related to the claim is generally not harmonised. This facilitates forum shopping for SLAPP claimants. It will be particularly difficult to adopt a uniform interpretation of 'manifestly unfounded claims' in view of the different national laws of Member States on non-contractual obligations arising out of infringements of personality rights,[36] and the difference between Member States in striking a balance between the right to freedom of expression and other fundamental rights.[37]

Second, as the 'early dismissal mechanism' only includes 'manifestly unfounded claims', it does not effectively address the SLAPP-related problem of abusive multistate litigation.[38] In particular SLAPP targets may still be easily sued before the courts of multiple Member States for claims based on online defamation or copyright infringements, because of the mosaic and accessibility approach to jurisdiction under Article 7(2) Brussels Ibis.[39] This also applies to

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32 T.E. van der Linden, 'Strategisch procederen tegen activisten: Over Strategic Lawsuits Against Public Participation (SLAPP's) in Nederland', *Nederlands Tijdschrift voor Burgerlijk Recht* 2020/9, nr. 3.1.

33 Ibid. Bayer, Bárd, Vosyliute & Luk 2021, p. 265 (*supra* note 19).

34 Ibid. See Supreme Court 6 April 2012, ECLI:NL:HR:2010:BV7828, *NJ* 2012/233 *(Grand Café A./Achmea)*, para. 5.1.

35 With respect to the courts' discretion, see in particular recitals 31 and 38 of the Anti-SLAPP Directive.

36 As pointed out by Svantesson, 'the variations within the EU in how different Member States deal with the right to protection of reputation is such that the topic was excluded' in Rome II. See D.J.B. Svantesson, 'Bad news for the Internet as Europe's top court opens the door for global content blocking orders', 3 October 2019, available at «https://www.linkedin.com/pulse/bad-news-internet-europes-top-court-opens-door-global-svantesson/». On the difference in balancing between the freedom of expression and the protection of the right to reputation by Member States, as Contracting States of the ECHR, and the substantive laws of European states that are overprotective regarding reputation, see T. Domej, 'The proposed EU anti-SLAPP directive: a square peg in a round hole', *Zeitschrift für Europäisches Privatrecht* 30(4) 2022, pp. 761, 764.

37 See European Law Institute, *Freedom of Expression as a Common Constitutional Tradition in Europe, Report of the European Law Institute*, 2022, p. 31, available at «https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Freedom_of_Expression.pdf».

38 See also J. Borg-Barthet & E. Ferguson, *An Anti-SLAPP Curriculum for Lawyers in the European Union*, report developed for the Pioneering anti-SLAPP Training for Freedom of Expression (PATFox) co-funded by the EU, 2023, p. 45.

39 With respect to the mosaic and online accessibility approach to jurisdiction under Art. 7(2) Brussels Ibis regarding online infringements of personality rights, such as defamation, see CJEU 25 October 2011, Cases C-509/09 and C-161/10, ECLI:EU:C:2011:685, *NIPR* 2011-475 (*eDate and Martinez*), para. 51. With respect to this approach to jurisdiction regarding alleged online copyright infringements, see CJEU 3 October

Dutch PIL which has a similar ground of jurisdiction as Article 7(2) Brussels Ibis, that generally follows the interpretation of the CJEU, as will be illustrated in section 4.2.2.

3.2 Burden of proof

Article 12 Anti-SLAPP Directive states that the burden rests on the claimant to prove that the claim is well founded, even if the defendant applies for an early dismissal of the case. With respect to the burden of proof, EU and Dutch PIL generally refer to the law governing the legal relationship or legal fact (*lex causae*).[40] The harmonised rule of Article 12 Anti-SLAPP Directive provides legal certainty for SLAPP targets as the burden of proof is reversed regardless of the applicable law. According to Dutch procedural law, the burden of proof that the claim is unfounded generally rests on the SLAPP target.[41] However, exceptions are possible, 'the President of the District court Amsterdam held that the public watchdog-role of the press may form a reason for restraint in placing the burden of proof on the press'.[42] This consideration by the President is in line with the rule in Article 12 Anti-SLAPP Directive.

3.3 The scope of the Member State courts' jurisdiction to impose penalties or other measures

Article 15 Anti-SLAPP Directive stipulates that in the case of abusive court proceedings against public participation, Member State courts should be able to 'impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings'. The European Parliament seems to have indicated in the amendment to Article 15 that a Member State court should have jurisdiction regarding the compensation of the full harm sustained by the SLAPP victim by stating that the victim does not 'need to initiate separate court proceedings'.[43] Although Article 15 Anti-SLAPP Directive aims to eliminate this need, the SLAPP target may in practice not be able to receive full redress by initiating a single procedure. This paragraph will illustrate that the possibility of obtaining full redress depends on the scope of the jurisdiction that the court has in the SLAPP case. Furthermore, this paragraph will show that Article 15 Anti-SLAPP Directive may not entail an effective improvement for SLAPP targets as the

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2013, C-170/12, ECLI:EU:C:2013:635, *NIPR* 2013-365 (*Pinckney*), paras. 44-47; CJEU 22 January 2015, C-441/13, ECLI:EU:C:2015:28, *NIPR* 2015-49 (*Pez Hejduk*), paras. 34, 36, 38.

40 See Art. 18(1) Rome I (Council Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations, *OJ* 2008, L 177/6-16); Art. 22(1) Rome II; Art. 13 of Book 10 DCC.

41 See Art. 150 Dutch Code of Civil Procedure (DCCP).

42 See the President of the District Court of Amsterdam 24 November 1982, *KG* 1982/216 referred to by Bayer, Bárd, Vosyliute & Luk 2021, p. 266 (*supra* note 19).

43 See 'Protection of journalists and human rights defenders from manifestly founded or abusive court proceedings', Amendments adopted by the European Parliament on 11 July 2023 on the proposal for a directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') (COM(2022)0177 – C9-0161/2022 – 2022/0117(COD)) (C/2024/4029), pp. 35/46, 36/46, Amendment 69 of Art. 15 para. 1.

Member State judgments that award the penalties, as indicated in this provision, may not be recognised and enforced in third countries.

In order to award damages or impose penalties, the SLAPP should constitute a tort.[44] According to Dutch PIL, a Dutch court can currently obtain jurisdiction in cross-border tort cases on the basis of Article 6 sub. e Dutch Code of Civil Procedure (hereinafter DCCP) if the harmful event has occurred or may occur in the Netherlands even if the defendant is domiciled outside the EU. The Dutch Supreme Court has held that the latter ground of jurisdiction generally needs to be interpreted in accordance with the CJEU's interpretation of Article 7(2) Brussels Ibis.[45] The following challenges related to Article 15 Anti-SLAPP Directive therefore also apply to Dutch PIL.

Based on the CJEU's case law on Article 7(2) Brussels Ibis, the claimant may sue the SLAPP target based on online alleged defamatory or copyright infringing content before a Member State court in the place in which this content is accessible online.[46] In view of this case law, this court of the place in which the damage occurred or may occur, *Erfolgsort*, has only territorially limited jurisdiction under Article 7(2) Brussels Ibis.[47] Article 15 Anti-SLAPP Directive may therefore not entail an effective improvement for SLAPP targets as this court can only assess the damage within the forum state and cannot impose a cross-border injunction.

With respect to a SLAPP claim based on infringements of personality rights, the court of the Member State in which the SLAPP target is domiciled under Article 4 Brussels Ibis and the court in the place of the harmful event, *Handlungsort*, under Article 7(2) Brussels Ibis, have jurisdiction to determine the entire damage, and to impose measures that have world-wide effect such as rectifications, or the online removal of content.[48] The court of the Member State in which the victim of personality rights, i.e. the SLAPP claimant, has its centre of interests may also obtain full jurisdiction.[49] However, as national laws on the protection of private life and personality rights diverge and 'the legitimate public interest in having access to information will necessarily vary, depending on its geographic location, from one third State to another',[50] Advocate General Szpunar argued that 'in the interest of international comity' courts should 'limit the extraterritorial effects of its [in]junctions concerning harm to private life and personality rights'.[51] Svantesson pointed out that 'the balance between the right to the

44 Bayer, Bárd, Vosyliute & Luk 2021, p. 265 (*supra* note 19). They refer to Art. 6:162 DCC as a ground to establish liability for tort in the Netherlands.

45 Supreme Court 29 March 2019, ECLI:NL:HR:2019:443, *NIPR* 2019-195, para. 4.1.3.

46 See the case law in *supra* note 39.

47 Ibid.

48 See *eDate and Martinez*, paras. 42, 48 (*supra* note 39); CJEU 17 September 2017, Case C-194/16, ECLI:EU:C:2017:766, *NIPR* 2018-53 (*Bolagsupplysningen and Ilsjan)*, para. 48.

49 Ibid. Lundstedt has argued that the 'victim's centre of interest' approach to jurisdiction does not concern victims that are holders of intellectual property rights except where a copyright owner's moral rights have been infringed. See L. Lundstedt, 'Putting Right Holders in the Centre: *Bolagsupplysningen and Ilsjan* (C-194/16): What Does It Mean for International Jurisdiction over Transborder Intellectual Property Infringement Disputes?', *International Review of Intellectual Property and Competition Law* (49) 2018, pp. 1022-1047.

50 Opinion of Advocate General Szpunar in the Case C-18/18 *Eva Glawischnig-Piesczek*, ECLI:EU:C:2019:458, para. 99. Szpunar referred to his Opinion in Case C-507/17 *Google*, ECLI:EU:C:2019:15, para. 60.

51 Opinion of Advocate General Szpunar in the Case C-18/18 *Eva Glawischnig-Piesczek*, para. 100 (*supra* note 50). See also para. 80 of this Opinion.

protection of reputation, on the one hand, and the freedom of information of internet users, on the other, is likely to vary significantly around the world', and Member States even deal differently with the protection of reputation as reflected by the exclusion of this topic from the Rome II Regulation.[52] The foregoing indicates that an EU judgment that awards damages to a SLAPP target may not be recognised and enforced in third countries.[53] In case the SLAPP claimant is domiciled outside the Union and has only assets outside the Union, Article 15 Anti-SLAPP Directive may therefore not contain efficient redress for SLAPP victims. Section 4.2.3 will discuss similar difficulties related to judgments rendered by EU courts that have obtained jurisdiction under Article 17(1) Anti-SLAPP Directive.

3.4 Addressing the remaining challenge of abusive multistate litigation: the 'directed activities' approach in the recast of Brussels Ibis

The procedural safeguards in the Anti-SLAPP Directive do not effectively address the challenge of abusive multistate litigation before Member State courts.[54] The European Parliament proposed to limit 'the place in which the defendant is habitually resident' as a ground for jurisdiction in 'defamation claims or other claims based on civil and commercial law which may constitute a SLAPP'.[55] However, in order to determine whether a case constitutes a SLAPP, the Member State court seised may have to assess the merits of the case quite extensively.[56] According to the settled case law of the CJEU, 'a jurisdictional assessment is by definition a prima facie one' for reasons of sound administration of justice and predictability.[57]

To achieve a balance between effectively combating abusive litigation and providing effective protection to victims of alleged infringed privacy and personality rights, Hess has advocated concentrating jurisdiction at the place where the alleged victim 'whose privacy and personality rights are infringed' via the internet has its 'centre of main interest' by a separate paragraph within the recast of Article 7 Brussels Ibis.[58] Other scholars have argued that the place in which the defendant (such as the potential SLAPP target) is habitually resident should be adopted as

52 Svantesson 2019 (*supra* note 36).

53 See also section 4.2.3. The case of *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'antisemitisme, L'union Des Etudiants Juifs De France*, 433, F.3d 1199 (9th Cir. 2006) illustrates that the public policy exception can be invoked to refuse a foreign judgment in case the state that has been requested to recognise this judgment has another view on the freedom of speech than the state that rendered the judgment. See in this context the Working Document on the amendment of Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations (Rome II), rapporteur: Diana Wallis, 23 June 2010, pp. 11-12.

54 With respect to the lack of the early dismissal mechanism of Art. 11 Anti-SLAPP Directive to effectively address multistate litigation, see section 3.1.

55 European Parliament Resolution on SLAPP 2021, paras. 22, 25 and Annex point 3, second a (*supra* note 2).

56 See also Kohler 2022, p. 825 (*supra* note 20).

57 See the Opinion of Advocate General Bobek in the Case C-27/17 *AB flyLAL-Lithianian Airlines*, ECLI:EU:C:2018:136, para. 92. See also CJEU 5 July 2018, Case C-27/17, ECLI:EU:C:2018:533, *NIPR* 2018-296 (*AB flyLAL-Lithianian Airlines*), para. 54.

58 B. Hess, 'Reforming the Brussels Ibis Regulation: Perspectives and Prospects', Max Planck Institute Luxembourg for Procedural Law Research Paper Series 2021(4), p. 10, available via «https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895006».

the sole ground for jurisdiction in defamation claims in the recast of Brussels Ibis, 'unless the parties agree otherwise'.[59]

These proposals address the mosaic approach to jurisdiction. Several scholars have nonetheless argued that 'as long as the substantial law on personality matters remains unharmonized within the EU', the mosaic principle reflects the reality that Member States have different approaches in striking a balance between freedom of expression and personality rights.[60] The same applies to copyright infringements as copyrights are territorially protected by national copyright laws that diverge. Even in spite of EU copyright law, national copyright laws diverge on certain subjects, such as moral rights.[61]

Instead of abolishing the mosaic approach, the accessibility approach to jurisdiction could be adjusted by adding the requirement that the alleged infringement of personality rights or copyrights should be directed at the forum state.[62] The 'directed activities' approach to jurisdiction curtails forum shopping and provides predictability and a close connection between the dispute and the forum that facilitate the sound administration of justice.[63] The non-exhaustive criteria established by the CJEU in the ruling in *Pammer and Alpenhof* to determine whether activities are directed at the residents of the forum state can be used by analogy under Article 7(2) Brussel Ibis with respect to the interpretation of the *Erfolgsort* in the case of alleged infringements of personality rights or copyrights.[64] For example, if a journalist, domiciled in Poland, has published on a news website with a Polish top-level domain name an article in the Polish language about the environmental pollution that a German company based on the border with Poland is causing in Poland, the application of the 'directed activities' approach under Article 7(2) Brussels Ibis in the case of an alleged infringement of personality rights or copyrights would limit the place where the journalist can be sued to Poland.

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59 Borg-Barthet 2020, pp. 21, 27 (*supra* note 10); Borg-Barthet, Lobina & Zabrocka 2021, pp. 5, 42, 51 (*supra* note 4).

60 D. Svantesson & I. Revolidis, 'From eDate to Gtflix: Reflections on CJEU Case Law on Digital Torts under Art. 7(2) of the Brussels Ia Regulation, and How to Move Forward', 2023, p. 19, available at «https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4353065». They refer in this context to the Opinion of Advocate General Hogan in the Case C-251/20 *GtflixTV*, ECLI:EU:C:2021:745, para. 83.

61 See B. van Houtert, *Jurisdiction in Cross-border Copyright Infringement Cases. Rethinking the Approach of the Court of Justice of the European Union* (diss. Maastricht University), ProefschriftMaken, 2020, paras. 2.2.1 (p. 75), 5.1.2, available at «https://cris.maastrichtuniversity.nl/en/publications/jurisdiction-in-cross-border-copyright-infringement-cases-rethink».

62 See also the 'focalisation' criterion proposed by Advocate General Hogan, and Svantesson and Revolidis. See the Opinion of Advocate General Hogan in *GtflixTV* Case C-251/20, paras. 87-93 (*supra* note 60); Svantesson & Revolidis 2023 (*supra* note 60). With respect to the 'directed activities' approach to jurisdiction regarding copyright infringements, see Van Houtert 2020, paras. 6.1, 8.2 (*supra* note 61).

63 Van Houtert 2020, paras. 6.1.4, 8.2 (*supra* note 61).

64 CJEU 7 December 2010, Joined Cases C-585/08 and C-144/09, ECLI:EU:C:2010:740, *NIPR* 2011-78 (*Peter Pammer v. Reederei Karl Schlütter GmbH & Co. KG and Hotel Alpenhof GesmbH v. Oliver Heller*), paras. 83-84. See also Van Houtert 2020, para. 6.1.2 (*supra* note 61) on the application of the circumstances of the *Pammer and Alpenhof* ruling with respect to the 'directed activities' approach to cross-border copyright infringement cases.

3.4.1 The 'directed activities' approach in the recast of Rome II

Adopting a uniform conflict-of-laws rule based on the 'directed activities' approach in the recast of Rome II for alleged infringements of personality rights could also improve the protection of (potential) SLAPP targets as persons who exercise the right to freedom of expression can expect that the law of the country to which their content is directed will be applicable. This approach is in accordance with the PIL principles of predictability and sound administration of justice as it establishes a close 'connection between the law applied to the dispute and the facts of the case'.[65]

With respect to SLAPP claims based on defamation, the European Parliament has proposed that the recast of Rome II should refer to 'the law of the place to which a publication is directed or, should that place not be possible to identify, the place of editorial control or relevant activity with regard to the public participation'.[66] However, for reasons of sound administration of justice and predictability, this rule should not be specifically designed for SLAPP cases but for defamation cases in general.[67]

As Article 15 Anti-SLAPP Directive requires Member State courts to impose effective appropriate measures based on their national laws, Kohler has argued that this provision has the character of a mandatory rule to protect SLAPP victims that is applicable regardless of the applicable law according to the conflict-of-law rule.[68] Furthermore, Member State courts could invoke the public policy exception in the recast of Rome II if the applicable foreign law manifestly violates the right to freedom of expression.[69]

4. Assessing the provisions related to third-country proceedings

4.1 Article 16: Grounds for the refusal of recognition and enforcement of a third-country judgment

4.1.1 The scope and rationale of Article 16

Pursuant to Article 16 Anti-SLAPP Directive, Member States should 'ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those

65 See also Borg-Barthet, Lobina & Zabrocka 2021, p. 44 (*supra* note 4).

66 See European Parliament Resolution on SLAPP 2021, paras. 22, 25 and Annex point 3, second b (*supra* note 2).

67 While Álvarez-Armas proposed several rules to determine the law that is applicable to SLAPPs, he pointed out the problem of defining the personal scope of this rule, i.e. how to identify SLAPP targets. See 'Álvarez-Armas on potential human-rights-related amendments to the Rome II Regulation (I): The law applicable to SLAPPs', available at «https://conflictoflaws.net/2021/alvarez-armas-on-potential-human-rights-related-amendments-to-the-rome-ii-regulation-i-the-law-applicable-to-slapps/».

68 Kohler 2022, p. 820 (*supra* note 20). Kohler also refers to the mandatory nature of the provisions of national law implementing the claim for damages according to Art. 17 Anti-SLAPP Directive. However, recital 44 Anti-SLAPP Directive states that Art. 17 'should not deal with applicable law or with substantive law on damages as such'.

69 With respect to the public policy exception in the context of the recognition and enforcement of a Member State judgment related to a SLAPP, see CJEU 4 October 2024, Case C-633/22, ECLI:EU:C:2024:843, *NIPR* 2024-786 (*Real Madrid Club de Fútbol, AE v. EE, Société Éditrice du Monde SA*, hereinafter *Real Madrid*).

proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought'. As these grounds for refusal aim to protect democracy and the right to freedom of expression and information in the EU,[70] they relate to the substantive aspect of the public policy exception. Yet, recital 43 of the Directive indicates that Member States can choose 'whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (*orde public*) or on the basis of a separate ground for refusal'.

While the public policy exception laid down in EU Regulations and Dutch PIL could be invoked regardless of where the SLAPP victim is domiciled, Article 16 Anti-SLAPP Directive only offers protection to SLAPP victims domiciled in the Member States.[71] The grounds for refusal in Article 16 concern non-EU judgments. However, as stipulated in Article 18 Anti-SLAPP Directive, the Directive does not affect the application of conventions on the recognition and enforcement of judgments between a third State and the EU or a Member State concluded before 6 May 2024.[72]

4.1.2 Improvements and challenges in view of EU and Dutch PIL

4.1.2.1 Limitation by law

The refusal to recognise and enforce a foreign judgment limits the claimant's procedural right to the effectiveness of judgments derived from the fair trail right under Article 6(1) European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter ECHR) to which the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union of 2012 (hereinafter the Charter) corresponds.[73] This refusal on the basis of the grounds of Article 16 Anti-SLAPP Directive may also limit substantive rights such as the claimant's right to respect for private and family life under Article 8(1) ECHR to which Article 7 of the Charter corresponds. Yet, the right to enforce a foreign judgment, including the substantive fundamental right(s) related to the judgment as illustrated above, is not absolute and under certain circumstances can be limited by other rights.[74] In a SLAPP case, other rights are generally the right to freedom of expression, or the freedom of the press, and the right to receive information guaranteed in Article 11 of the Charter.[75]

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70 See recital 43 Anti-SLAPPs Directive.

71 See, for instance, Art. 45(1)(a) Brussels Ibis. See section 4.1.2.1 on the Dutch public policy exception.

72 As stated in recital 45 Anti-SLAPPs Directive, the 2007 Lugano Convention (Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ* 2007, L 337/3) prevails over this Directive.

73 See the Opinion of Advocate General Szpunar in Case C-633/22 *Real Madrid*, ECLI:EU:C:2024:127, paras. 58, 131. For the case law of the European Court of Human Rights (ECtHR) on the right to the enforcement of foreign judgments, see P. Kinsch, 'Enforcement as a fundamental right', *NIPR* 2014, pp. 540-544.

74 See the Opinion of Advocate General Szpunar in Case C-633/22 *Real Madrid*, para. 59 (*supra* note 73); Kinsch 2014, p. 543 (*supra* note 73).

75 Recital 22 Anti-SLAPP Directive also refers to the freedom of the arts and sciences, and the freedom of assembly. See Art. 4(1) Anti-SLAPP Directive.

However, as indicated by Article 52(1) Charter, the limitation of the right to enforcement, including the substantive fundamental right(s) related to the judgment, must be provided for by law which concerns both codified and uncodified law provided that it is accessible and clearly predictable.[76] Article 16 Anti-SLAPP Directive can be regarded as such a codified legal rule. As mentioned earlier, recital 43 states that 'it is for Member States to choose whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (*ordre public*) or on the basis of a separate ground for refusal'. The Dutch public policy exception is established by Dutch case law; this exception constitutes one of the four *Gazprombank* requirements for the recognition of a foreign judgment not governed by an EU Regulation or Convention.[77] This exception satisfies the legal requirement of Article 52(1) Charter. Sections 4.1.2.2 to 4.1.2.5 will demonstrate that even without the Anti-SLAPP Directive, the Dutch public policy exception is able to provide protection to SLAPP targets, particularly in view of the CJEU's ruling in *Real Madrid*.[78]

4.1.2.2 The principle of proportionality

In line with Article 52(1) Charter, recital 52 of the Anti-SLAPP Directive contains the requirement to strike 'a fair balance between the rights concerned, in accordance with the principle of proportionality'. However, the Directive does not appear to elaborate on this principle, except for the illustration in recital 29 that when a manifestly excessive amount or remedy is claimed in the case of a minor violation of personality rights, this constitutes an abusive claim.

Based on the case law of the CJEU and ECtHR regarding the proportionality of the interference with the freedom of expression according to Article 11 in conjunction with Article 52(1) Charter, respectively Article 10 ECHR, in the *Real Madrid* ruling the CJEU has provided various factors to determine whether there is a manifest breach of the freedom of expression that constitutes a ground for the refusal to recognise a Member State judgment on the basis of the public policy exception under Brussels Ibis.[79] According to the CJEU, it is important whether the measures or sanctions taken are such as to deter the person involved, in this particular case the press, from participating in a discussion on issues of legitimate public interest.[80] The CJEU held that the risk of this deterrent effect particularly exists if the damages awarded are manifestly disproportionate to the damage to reputation.[81] Yet, the requested court should

76 C.J.S. Vrendenbarg, *Proceskostenveroordeling en toegang tot de rechter in IE-zaken: regelingen over proceskosten getoetst aan het EU-recht* [Legal Costs Shifting and Access to Justice in IP Disputes. Rules on legal cost shifting tested in accordance with EU law], serie Burgerlijk Proces & Praktijk, Vol. XIX, Deventer: Wolters Kluwer 2018, no. 45. Vrendenbarg refers in this context to the Opinion of Advocate General Cruz-Villalón in Case C-70/10 (*Scarlet/Sabam*), ECLI:EU:C:2011:255, para. 99.

77 Supreme Court 26 September 2014, ECLI:NL:HR:2014:2838, *NIPR* 2014-381, para. 3.6.4 (*Gazprombank*).

78 *Real Madrid* (*supra* note 69).

79 *Real Madrid*, paras. 48-71.

80 *Real Madrid*, para. 61. Besides measures that award damages, account must be taken of the other sanctions imposed, such as the publication of a denial, a correction or a formal apology, as well as the legal costs imposed on the person found liable, see para. 65

81 *Real Madrid*, para. 69. In this context, the terms 'chilling effect' (*supra* note 4) and 'deterrent effect' are used interchangeably, see Advocate General Szpunar in Case C-633/22 *Real Madrid*, para. 163 (*supra* note 73).

take into account all the circumstances of the case, which include not only the resources of the persons found liable but also the seriousness of their transgression and the extent of the harm as established in the judgment.[82]

Furthermore, the CJEU ruled that the requested court should limit the refusal to the part of the damages awarded which is manifestly disproportionate in the requested Member State.[83] This is in line with the Dutch case law that a judgment that awards excessive or punitive damages will only be partially recognised and enforced with respect to the award of compensatory damages as Dutch civil law fundamentally rejects the awarding of damages by way of punishment, and only allows compensation for damages that are actually suffered.[84] According to Dutch case law, a Dutch court can thus even refuse to recognise such a judgment if a claim is well founded. With respect to the latter situation, Dutch PIL seems to offer more protection to SLAPP targets, as the Directive states that proceedings are not regarded as abusive if the claimant pursues claims that are (partially) founded.[85] According to recital 55 and Article 3, the Anti-SLAPP Directive allows for more favourable national law to protect SLAPP targets.

4.1.2.3 Assessing 'manifestly unfounded' court proceedings

The two grounds for refusal in Article 16 Anti-SLAPP Directive may require a fairly intensive assessment of the merits of the case by the requested court. In particular the ground of 'manifestly unfounded proceedings' may require the requested Member State court to balance the right to freedom of expression against substantive fundamental rights related to the judgment such as the right to respect for private life.[86] The assessment of this ground may therefore not be in accordance with the prohibition on reviewing a foreign judgment as to its substance (the prohibition of *révision au fond*) under Brussels Ibis[87] and in Dutch PIL.[88,89] In the case of *Real Madrid*, the CJEU ruled that the recognition and enforcement of Member State judgments

82 *Real Madrid*, para. 68.

83 *Real Madrid*, para. 73.

84 See B. van Houtert, 'Het 2019 Haags Vonnissenverdrag: een *game changer* in Nederland? Een rechtsvergelijkende analyse tussen het verdrag en het Nederlandse commune IPR' ['The 2019 Hague Judgments Convention: a game changer in the Netherlands? A comparative law analysis between the Convention and Dutch Private International Law'], *Nederlands Internationaal Privaatrecht,* 2023, p. 592. See, *inter alia*, Court of Appeal of 's-Hertogenbosch 31 August 2021, ECLI:GHSHE:2021:2699, paras. 3.7.3-3.7.5, 3.9.

85 See recital 29 of the Anti-SLAPP Directive.

86 Recital 52 Anti-SLAPP Directive contains the requirement of 'a fair balance between the rights concerned'.

87 See, e.g., ECJ 28 March 2000, Case C-7/98, ECLI:EU:C:2000:164, *NIPR* 2000-126 (*Krombach)*, para. 36. See also Art. 45(2) Brussels Ibis.

88 See Supreme Court 18 January 2019, ECLI:NL:HR:2019:54, *NIPR* 2019-63 (*Yukos*), para. 4.1.4. However, Art. 431(2) DCCP provides for the peculiar possibility of a new substantive assessment of the case in which the foreign judgment serves only as evidence. See the forthcoming T. Bens & B. van Houtert, 'National Report: The Netherlands', in: T. Lutzi, E. Piovesani & D. Zgrabljić Rota (eds.), *Recognition and Enforcement of Non-EU Judgments*, Oxford: Hart 2025.

89 Kohler has argued that Art. 16 obliges the court to review the foreign judgment as to its substance. See Kohler 2020, p. 818 (*supra* note 20). However, if in the original foreign judgment there had clearly been abusive court proceedings under the law of the Member State court requested to enforce the judgment, this court does not need to assess the substance of this judgment.

related to SLAPPs can be refused under Brussels Ibis; however, the CJEU explicitly referred to the prohibition of *révision au fond*.[90] In this case, Advocate General Szpunar in particular argued that the requested Member State court is not allowed to balance the right to freedom of expression and the right to respect for private life because of the prohibition of *révision au fond*.[91] Yet, this court should seek to strike a fair balance between the right to the enforcement of this judgment and the right to freedom of expression that will be affected by this judgment.[92] As Article 16 Anti-SLAPP Directive does not seem to prohibit *révision au fond*, Member State courts will be allowed to make a broad assessment including the balancing of all fundamental rights involved, which may improve the protection of SLAPP targets. However, it may be challenging for the requested Member State court to assess all the facts of the case, which will not enhance the sound administration of justice. Furthermore, this broad assessment may result in conflicts in terms of international comity. It has been argued that 'the practice of *révision au fond* invites retaliation'.[93]

Up until now, there has been no Dutch case law on the public policy exception regarding a third-country judgment related to a SLAPP. However, based on the 'internal border' criterion related to Dutch public policy (*binnengrenscriterium*),[94] the recognition of a foreign judgment ensuing from abusive court proceedings could be refused because of the negative consequences on the right to freedom of expression and to information which are fundamental rights in the Dutch legal order. The factors provided by the CJEU in the *Real Madrid* ruling should be applied by analogy to assess the deterrent effect on persons when exercising their freedom of expression in the public interest.[95] Based on the 'external border' criterion (*buitengrenscriterium*) related to the Dutch public policy exception, the content of the foreign judgment should not violate the right to freedom of expression as this is a fundamental right according to the Dutch legal order, which includes national, international and EU law.[96] As the ground of 'manifestly unfounded proceedings' in Article 16 Anti-SLAPP Directive seems to eliminate the prohibition of *révision au fond*, the Dutch courts can refuse the recognition of a judgment that does not strike a fair balance between the right to freedom of expression and to information against

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90 *Real Madrid*, paras. 36-39, 70-71.

91 Opinion of Advocate General Szpunar in the Case C-633/22 *Real Madrid*, paras. 120-126 (*supra* note 73).

92 Ibid., para. 169.

93 F.K. Juenger, 'The Recognition of Money Judgments in Civil and Commercial Matters', *The American Journal of Comparative Law* (36) 1988, p. 29.

94 See, *inter alia*, Court of Appeal of Amsterdam 17 July 2018, ECLI:NL:GHAMS:2018:3008, *NIPR* 2018-429, para. 3.23; District Court of Midden-Nederland 11 September 2019, ECLI:NL:RBMNE:2019:4310, *NIPR* 2020-99, para. 4.14.

95 See section 4.1.2.2.

96 See *Yukos*, para. 4.1.3 (*supra* note 88). See M.H ten Wolde, J.G. Knot & K.C. Henckel, *Tenuitvoerlegging van buitenlandse civielrechtelijke vonnissen in Nederland buiten verdrag en verordening (art. 431 Rv)* [Enforcement of foreign civil judgments in the Netherlands without applicable treaty or EU Regulation (Art. 431 DCCP)], The Hague: Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC) 2017, p. 52; A.P.M.J. Vonken (with the assistance of H.L.E. Verhagen, X.E. Kramer & S. van Dongen), *Mr. C. Assers Handleiding tot de beoefening van het Nederlands Burgerlijk Recht. 10. Internationaal privaatrecht. Deel I. Algemeen deel IPR* [Mr. C. Assers Handbook to the practice of Dutch civil law. 10. Private International Law. Part I. General part PIL], Deventer: Wolters Kluwer 2023, no. 485, 493, 505. With respect to the external and internal boundaries related to Dutch public policy, see in particular nos. 494-495.

possible substantive fundamental rights related to the judgment involved, such as the right to protect one's reputation.

However, the outcome of this balancing act may vary between Member States. A SLAPP target domiciled in the EU may therefore not receive the same protection in all Member States. The legal certainty and protection for SLAPP targets will increase if Member State courts apply by analogy the factors established by the CJEU in the *Real Madrid* ruling to assess whether there is a manifest breach of the right of freedom expression and, thus, a breach of public policy in the Member State in which enforcement is sought.[97] These factors are based on the ECtHR's case law that leaves less leeway to Contracting States, including EU Member States, for restrictions on the freedom of expression on matters of general interest.[98] This is in line with the aim of the Anti-SLAPP Directive to protect the exercise of freedom of expression to facilitate access to information concerning matters of public interest.[99] Furthermore, recital 4 Anti-SLAPP Directive states that it is necessary to give Article 11 Charter 'the meaning and scope of corresponding Article 10' ECHR.

While the public policy exception in Dutch PIL thus already provides for sound protection for SLAPP targets, the grounds in Article 16 Anti-SLAPP Directive can especially improve the protection of SLAPP targets in Member States where the level of protection for the freedom of expression is lower. The *Real Madrid* ruling in particular should play an important guiding role in the latter Member States.

4.1.2.4 'Manifestly' contrary to public policy

As mentioned earlier, recital 43 of the Anti-SLAPP Directive states that 'it is for Member States to choose whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (*orde public*) or on the basis of a separate ground for refusal'. In view of the *Real Madrid* case, Member States will likely use the public policy exception as a basis for refusing to recognise and enforce foreign judgments ensuing from SLAPPs. Article 45(1)(a) Brussels Ibis also employs the 'manifest' requirement which stems from the principle of mutual trust related to the free movement of judgments within the EU.[100] The Dutch Supreme Court, however, has not laid down this requirement with respect to the public policy exception.[101] The Directive nevertheless allows for more favourable national law to protect SLAPP targets.[102]

4.1.2.5 Exhaustion of legal remedies?

Article 16 Anti-SLAPP Directive does not state whether legal remedies must be exhausted in the state that rendered the judgment in order to successfully invoke the grounds for refusal. However, the rule of 'exhaustion of legal remedies' would entail higher costs for SLAPP

97 See section 4.1.2.2.

98 See *Real Madrid*, para. 53.

99 On matters of public interest, see Art. 4(2) and, *inter alia*, recitals 22, 23, 26, 27 Anti-SLAPP Directive.

100 See *Real Madrid*, paras. 36-44, 67.

101 However, the case law of the lower courts shows that a foreign judgment will only be contrary to Dutch public policy in exceptional cases, see van Houtert 2023, p. 591 (*supra* note 84).

102 Recital 55 and Art. 3 Anti-SLAPP Directive.

targets. This rule established by the CJEU in the context of the public policy exception under Brussels Ibis should therefore not be applied by analogy.[103] Yet, this rule makes an exception if 'specific circumstances make it too difficult, or impossible, to make use of the legal remedies in the Member State of origin'.[104] Based on the case law of the Dutch Supreme Court, it is also possible to deviate from the 'exhaustion of legal remedies' requirement on the basis of the particular circumstances of the case.[105]

4.2 Article 17: Jurisdiction for actions related to third-country proceedings

4.2.1 The scope and rationale of Article 17

With respect to abusive court proceedings against public participation in a third-country court brought by a claimant domiciled outside the EU, Article 17(1) Anti-SLAPP Directive requires Member States to provide for the jurisdiction of the courts of the place where the SLAPP target is domiciled. The jurisdiction of these courts concerns compensation for the damage and the costs incurred in connection with the third-country proceedings. However, according to Article 17(2), Member States may limit the exercise of this jurisdiction while proceedings in this third country are still pending.

This special ground of jurisdiction seeks 'to act as a deterrent against SLAPPs brought in third-countries against persons domiciled in the Union'.[106] Furthermore, this ground applies regardless of whether the third-country court has rendered a decision 'as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim'.[107]

4.2.2 Improvements in view of EU and Dutch PIL

The jurisdictional ground of Article 17(1) Anti-SLAPP Directive seems to add a new type of weaker party in the context of EU PIL. In line with the weaker parties that receive jurisdictional protection under Brussels Ibis, there is usually an economic and power imbalance between SLAPP targets and SLAPP claimants, also referred to as 'an inequality of arms between the disputing parties'.[108] On the basis of Brussels Ibis, the SLAPP target cannot generally bring a claim for damages or costs related to a SLAPP procedure before a Member State court if the claimant is domiciled outside the EU.[109] Yet, it will not be necessary to adopt the special

103 CJEU 16 July 2015, Case C-681/13, ECLI:EU:C:2015:471, *NIPR* 2015-398 (*Diageo Brands*), para. 64.

104 Ibid.

105 *Yukos*, paras. 4.3.3-4.3.4 (*supra* note 88); Supreme Court 16 July 2021, ECLI:NL:HR:2021:1170, *NIPR* 2021-405 (*ABA/ENEL*), para. 3.3.2.

106 Recital 44 Anti-SLAPP Directive.

107 Ibid.

108 Farrington & Zabrocka 2023, p. 521 (*supra* note 26). See also ECtHR 15 March 2022, *OOO Memo v. Russia*, Appl. No. 2840/10, para. 43; Recital 15 Anti-SLAPP Directive.

109 See Arts. 4(1) and 6(1) Brussels Ibis. With respect to a SLAPP case against an employee in the context of labour situations, Arts. 20-23 Brussels Ibis confers jurisdiction on certain Member State courts even if the employer is domiciled outside the EU.

jurisdictional ground of Article 17 Anti-SLAPP Directive into the Brussels Ibis recast, because this ground will be effective via the implementation in the national PIL of Member States. However, as indicated in section 3.4, it is desirable to mitigate the negative effects of the mosaic approach to jurisdiction in the recast of Brussels Ibis to protect SLAPP targets against abusive multistate litigation in Member State courts.

The following assessment will focus on whether Article 17(1) improves the position of SLAPP targets from the perspective of Dutch PIL. Currently, if a SLAPP target files a tort claim for the compensation of damage or costs incurred as a result of third-country proceedings by a claimant domiciled outside EU, a Dutch court has to assess whether it can obtain jurisdiction under Article 6 sub. e DCCP on the basis of the place where the harmful event occurred or may occur. As determined by the Dutch Supreme Court, Article 6 sub. e DCCP needs to be interpreted in accordance with Article 7(2) Brussels Ibis.[110] According to the settled case law of the CJEU, both the *Handlungsort* and the *Erfolgsort* are relevant jurisdictional grounds under Article 7(2) Brussels Ibis.[111] The place of the court in which the SLAPP target is sued by the claimant could be regarded as the *Handlungsort*. This place will often coincide with the claimant's place of domicile. If this place is outside the EU, the Dutch courts cannot obtain jurisdiction on the basis of the *Handlungsort*. For the SLAPP target, it will be costly and time-consuming to initiate proceedings in a third-country court in order to obtain compensation for the damage and the costs incurred in connection with these proceedings. From this perspective, the jurisdictional ground in Article 17(1) Anti-SLAPP Directive is definitely an improvement for SLAPP targets.

As regards the localisation of the *Erfolgsort* under Article 6 sub. e DCCP in the case of non-material, psychological damage, the Dutch Supreme Court has referred to the place where the victim's physical and psychological integrity was affected even though the psychological symptoms only arose in the victim's place of residence in the Netherlands.[112] If a SLAPP is initiated outside the Netherlands, Article 17(1) Anti-SLAPP Directive nonetheless enables access to the Dutch courts regarding psychological damage sustained by a SLAPP target domiciled in the Netherlands.

With respect to purely financial damage, the CJEU has repeatedly held that the *Erfolgsort* does not automatically coincide with the place where the plaintiff is domiciled.[113] The fact that the financial damage is directly sustained to the bank account of the plaintiff located in its place of domicile is not sufficient to establish jurisdiction in that place, but 'other circumstances specific to the case' should 'contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred'.[114] Hence, it is questionable whether the fact that a SLAPP victim sustains loss to his bank account in his place of domicile would provide jurisdiction to the Dutch courts. However, on the basis of Article 17(1) Anti-SLAPP Directive, the Dutch

110 Supreme Court 29 March 2019, ECLI:NL:HR:2019:443, *NIPR* 2019-195, para. 4.1.3.

111 ECJ 30 November 1976, Case C-21/76, ECLI:EU:C:1976:166 (*Handelskwekerij G.J. Bier B.V. v. Mines de Potasse d'Alsace S.A.*).

112 Supreme Court 7 December 2001, ECLI:NL:HR:2001:AD3965, para. 3.3.

113 See, *inter alia*, CJEU 16 June 2016, Case C-12/15, ECLI:EU:C:2016:449, *NIPR* 2016-298 *(Universal Music International Holding v. Michael Tétreault Schilling and Others*), para. 35.

114 Ibid., paras. 35-39.

courts can obtain jurisdiction to assess a claim to compensate financial damage suffered by a SLAPP target domiciled in the Netherlands.

The case of *Energy Transfer et al. v. Greenpeace International et al*. illustrates the benefit that the venue under Article 17(1) Anti-SLAPP Directive provides for SLAPP targets, established in the Netherlands, that are faced with damages and costs incurred in connection with third-country proceedings.[115] In 2016, Greenpeace International (hereinafter GI) 'signed an open letter about a public issue, namely the construction of an oil pipeline extending from North Dakota to Illinois, USA'.[116] Consequently, Energy Transfer LP and related companies who are involved in this oil pipeline (hereinafter ET) successively sued GI and several other defendants in two courts in the U.S. claiming extraordinarily high damages on the basis of, *inter alia*, false and defamatory statements.[117] While the first court dismissed the claims by ET, the proceedings in the second court are still pending. As a result of these SLAPPs, GI claims to have sustained costs and damages, both financial and reputational damage, in its domicile in Amsterdam, the Netherlands.[118] However, as argued above, the Dutch court cannot rely on Article 6 sub. e DCCP to assess this claim by GI against the American-based companies. Yet, the Dutch court could obtain jurisdiction to assess the claim by GI on the basis of Article 17(1) Anti-SLAPP Directive.[119] This provision has therefore been invoked by GI, even before its actual implementation.[120]

4.2.3 Challenges

The requirement of 'abusive court proceedings against public participation' under Article 17(1) Anti-SLAPP Directive, as defined in Article 4(3), may require an assessment of the merits of the case in more detail, in particular to determine the main purpose of deterrence of public participation[121] and whether the claim is (partially) unfounded. This deviates from settled CJEU case law on international jurisdiction under Brussels Ibis which determines that 'a jurisdictional assessment is by definition a prima facie one' for reasons of sound administration of justice and predictability.[122] Unfortunately, the burden of proof rule under Article 12 Anti-SLAPP Directive does not include a denial of the 'main purpose of deterrence of public participation'. However, the ECtHR's case law indicates that 'the chilling effect of abusive litigation is implicit in the way a claim is framed and need not be proved independently'.[123]

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115 With respect to the SLAPP case of *Energy Transfer et al. v. Greenpeace International et al.*, see *supra* note 28.

116 See the Notice of Liability sent by Greenpeace International, 23 July 2024, p. 1, available at, «https://www.greenpeace.org/static/planet4-international-stateless/2024/07/1ffec08d-et-slapp-notice-of-liability.pdf».

117 Ibid. for more information on the two cases named 'Federal lawsuit' (p. 3) and 'State Lawsuit' (p. 4).

118 Ibid., p. 8.

119 Ibid., p. 2.

120 See section 2 of the Notice.

121 See also P. Shapiro, 'SLAPPs: Intent or Content? Anti-SLAPP Legislation Goes International', *Review of European Community & International Environmental Law* 19(1) 2010, p. 25.

122 See the Opinion of Advocate General Bobek in the Case C-27/17 *AB 'flyLAL-Lithianian Airlines*, para. 92 (*supra* note 57). See also CJEU *AB 'flyLAL-Lithianian Airlines*, para. 54 (*supra* note 57).

123 See Borg-Barthet & Ferguson 2023, p. 12 (*supra* note 38). Borg-Barthet and Ferguson refer to the ECtHR's judgment on 15 June 2017 in the case of *Independent Newspaper (Ireland) Limited v. Ireland*, Appl. No. 28199/15.

Furthermore, the jurisdictional ground of Article 17(1) will not always enable efficient redress. In the case of a third-country judgment ruling against the SLAPP target, the Member State judgment that awards compensation for damages and costs will likely not be recognised and enforced in this third country. Recital 44 Anti-SLAPP Directive also seems to acknowledge that the Member State judgment in the context of Article 17 will only be effective if the decision is 'capable of being enforced, for example, where a SLAPP claimant domiciled outside the Union has assets in the Union'.

A third-country court may not only refuse to recognise the Member State judgment on the basis of irreconcilable decisions, but also by means of the public policy exception, or if the jurisdictional ground of Article 17(1) is considered to be exorbitant in the third country in question. The full scope of the jurisdiction of the Member State court to assess the damage and the costs incurred in connection with the third-state proceedings may also be criticized by third countries as 'jurisdictional "hyperregulation"'[124] or a negative kind of 'Brussels effect'.[125] From the perspective of the sound administration of justice, it could be questioned whether there is a close connection between the court based on Article 17(1) and the claim of the SLAPP target to compensate its costs resulting from the third-country court proceedings. The third-country court where the SLAPP proceedings are initiated may be better placed to determine the financial costs incurred in connection with this proceeding. If the third-country court has not yet rendered a (final) judgment, the provision of Article 17(2) Anti-SLAPP Directive could be a solution in view of international comity and the sound administration of justice. The next section will assess this provision.

4.2.3.1 Article 17(2) limiting the exercise of jurisdiction under Article 17(1)

Article 17(2) Anti-SLAPP Directive states that Member States may limit the exercise of jurisdiction under Article 17(1) while proceedings are still pending in the third country, without stipulating any further requirements. According to recital 44 Anti-SLAPP Directive, the court of a Member State that obtained jurisdiction under Article 17(1) can limit the exercise of this jurisdiction 'in accordance with national law, for example by providing for a stay of the proceedings' in this Member State.

On the basis of the *lis pendens* provision of Article 12 DCCP, a Dutch court can stay proceedings in a case between the same parties regarding the same cause of action if the action is first brought before a foreign court whose proceedings might result in a judgment that could be recognised and, where applicable, enforced in the Netherlands. Despite the broad interpretation of the term 'same cause of action' as being the same 'subject matter',[126] this requirement is not satisfied if, for instance, the SLAPP claimant has first filed its claim in the third country

124 D.J.B. Svantesson, *Internet & Jurisdiction Global Status Report 2019*, Internet & Jurisdiction Policy Network 2019, p. 50.

125 See also section 3.3 on the criticism regarding the extraterritorial effects of judgments concerning harm to private life and personality rights.

126 See M. Zilinsky, 'commentaar op art. 12 Rv' ['Comment on Art. 12 DCCP'], in: F.J.P. Lock, A.I.M. van Mierlo & C.J.J.C. van Nispen (eds.), *Tekst en Commentaar Burgerlijke rechtsvordering inclusief Brussel I bis-Verordening* [Text and Commentary Civil Procedure including Brussels Ibis Regulation], Deventer: Wolters Kluwer, 2024, no. 7.

on the basis of defamation allegedly caused by the SLAPP target, while in the Netherlands the SLAPP target has subsequently filed a claim for the compensation of costs and damages incurred by SLAPP proceedings in this third country. While the former claim is based on the law that protects the reputation of the SLAPP claimant, the latter claim is based on the law that protects SLAPP targets such as provisions protecting against 'abuse of rights under Dutch civil law' as laid down in Articles 6:162 and 3:13 DCC, 'read in conjunction with Articles 8 and 10 of the European Convention on Human Rights', the Anti-SLAPP Directive and Article 11 Charter.[127] In the SLAPP case described above, Article 12 DCCP will thus not apply after the implementation of Article 17 Anti-SLAPP Directive which means that the Dutch court cannot stay the proceedings. However, as indicated in section 4.2.3, in view of international comity and the sound administration of justice, it could be argued that Member State courts should stay proceedings under certain circumstances. For instance, if it is expected that the third-country court will dismiss the SLAPP claim or render a judgment in favour of the SLAPP target within a reasonable period of time.

Article 12 DCCP could be invoked if the SLAPP target first filed a claim in the court of a third country for the compensation of the costs and damage incurred by SLAPP proceedings in this third country, and has subsequently filed the same claim in the Dutch court under Article 17(1). The SLAPP target might have first filed this claim in the third country where the SLAPP was initiated because the target had assumed that the third-country court would dismiss the case based on SLAPP. Later, the SLAPP target may have filed the same claim in the Netherlands, given the high likelihood that the third-country court will issue a judgment against the SLAPP target anyway. Based on Article 12 DCCP, the Dutch court will likely not stay the proceedings if it is expected that the third-country court will render a judgment against the SLAPP target, and will therefore reject the claim of the SLAPP target to compensate its costs and damages, as this third-country judgment will not be recognised in the Netherlands.

In view of the differences between Member States' approaches to limit the exercise of jurisdiction,[128] uniform requirements in Article 17(2) Anti-SLAPP Directive would have provided more predictability. Yet, in view of international comity, it is desirable to adopt a uniform mechanism that is applicable to Member States and third countries to reduce concurrent proceedings and the risk of irreconcilable decisions. In order to coordinate parallel proceedings in multiple states, the 'Jurisdiction Project' of the Hague Conference on Private International Law aims to achieve a consensus between civil law and common law-based states.[129] However,

127 See Notice of Liability sent by Greenpeace International, p. 5 (*supra* note 116).

128 The courts of civil law-based Member States may limit the exercise of their jurisdiction by staying proceedings when, in another state, proceedings are pending between the same parties that involve the same cause of action or related actions (*lis pendens*). Yet, the courts of common law-based Member States, such as Malta and Ireland, do not apply the *lis pendens* rule separately, but they do take into account the existence of a prior pending proceeding with respect to the application of the *forum non conveniens* doctrine. See L. Silberman, '*Lis alibi pendens*', in: J. Basedow, G. Rühl, F. Ferrari & P. de Miguel Asensio (eds.), *Encyclopedia of Private International Law*, Cheltenham: Edward Elgar Publishing 2017, p. 1158.

129 See «https://www.hcch.net/en/projects/legislative-projects/jurisdiction».

the latest revised draft of the provisions on parallel proceedings by the Working Group on Jurisdiction excludes matters on defamation and privacy.[130]

5. Conclusion

The Anti-SLAPP Directive shows that in addition to the procedural safeguards, PIL has the ability to enhance the protection of SLAPP targets. While the public policy exception in Dutch PIL already has a great deal of potential to refuse the recognition and enforcement of third-country judgments involving a SLAPP, the grounds in Article 16 Anti-SLAPP Directive provide legal certainty, and likely have a deterrent effect on SLAPP claimants outside the EU. However, Member State courts have leeway to assess, on the basis of their national law, whether the third-country proceedings are manifestly unfounded or abusive. A SLAPP target may therefore not receive the same protection in all Member States. The *Real Madrid* ruling should nonetheless play an important guiding role in all Member States; the legal certainty and protection for SLAPP targets will increase by applying by analogy the factors established by the CJEU in the *Real Madrid* ruling to determine whether there is a manifest breach of the freedom of expression.

In view of EU and Dutch PIL, the venue provided by Article 17(1) Anti-SLAPP Directive improves the access to Member State courts for SLAPP targets domiciled in the EU regarding the damage and costs incurred by SLAPPs in third countries. However, the criterion of 'the main purpose of deterrence of public participation' may impede the sound administration of justice and predictability. This challenge will be alleviated by applying by analogy the indicators of 'deterrent effect' as stated by the CJEU in the *Real Madrid* ruling. Furthermore, the effectiveness of the special jurisdictional ground of Article 17(1) Anti-SLAPP Directive is challenged by the possibility that third states may not recognise and enforce this judgment. To facilitate access to justice and increase the deterrent effect for SLAPP claimants, this jurisdictional ground should be accepted by third states. While the Hague Judgments Convention facilitates the recognition and enforcement of foreign judgments,[131] the scope of this treaty unfortunately excludes important matters related to SLAPP claims such as privacy, defamation and intellectual property. International cooperation is important to effectively combat SLAPPs worldwide.

Yet, there are still gains to be made in the area of EU PIL to enhance the protection of SLAPP targets. The Anti-SLAPP Directive does not prevent SLAPP targets from being abusively sued in multiple Member States on the basis of online infringements of personality rights or copyrights. The recast of Brussels Ibis and of Rome II should aim to alleviate the negative effects of the mosaic approach to jurisdiction regarding these infringements by adopting the 'directed activities' approach, or another approach that meets the PIL principles of predictability and a close connection between the forum and the dispute.

130 Ibid., see Art. 2(1)(k)(l)(m) of the ANNEX I Revised draft of the provisions on parallel proceedings for future discussion by the Working Group on Jurisdiction: Report of 2024, Prel. Doc. No. 2 of February 2024.

131 Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters concluded under the auspices of the Hague Conference on Private International Law.